

# ARKANSAS SUPREME COURT

No. CR 07-1038

DARRA BARRITT  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      January 17, 2008

PRO SE MOTION FOR  
APPOINTMENT OF OTHER COUNSEL  
[CIRCUIT COURT OF BENTON  
COUNTY, CR 2005-477]

MOTION DENIED.

## PER CURIAM

Appellant Darra Barritt was found guilty of first-degree battery and sentenced to twelve years' imprisonment. The Arkansas Court of Appeals affirmed on direct appeal and dismissed a cross-appeal by the appellee. *Barritt v. State*, CACR 06-1261 (Ark. App. Sept. 19, 2007). This court granted review on November 8, 2007. Appellant, who has been represented on appeal by an appointed attorney, Brian Burke, now asks in a pro se motion that a different attorney be appointed to represent her in this court.

Appellant contends that new counsel should be appointed because she has filed in the trial court a petition for relief pursuant to Criminal Procedure Rule 37.1, creating a conflict of interest for counsel.<sup>1</sup> Appellant does not explain the nature of the conflict, but even if she has alleged that Mr.

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<sup>1</sup> Appellant's filing of a petition under the rule is premature. A trial court is without authority to decide a petition for postconviction relief on the merits when the petition is filed while an appeal is pending. *Brewer v. State*, 274 Ark. 38, 621 S.W.2d 698 (1981). A petition for postconviction relief must be filed after the mandate is issued because when a case is on appeal the trial court does not regain jurisdiction over the case until that event occurs. *Doyle v. State*, 319 Ark. 175, 176, 890 S.W.2d 256, 257 (1994) (per curiam).

Burke has not afforded her effective representation, she has offered no facts to demonstrate to this court that there is good cause to replace counsel at this juncture.

Motion denied.